IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Date of decision : September 21, 2007

1. CWP No.10864 of 2006

Lal Chand Saini vs Union of India & others

2. C.W.P No.20377 of 2006

Om Parkash Kakar & others vs Union of India & others

3. C.W.P No.4929 of 2006

Manmohan Singh vs Govt. of India & others

4. C.W.P No.12602 of 2007

Virander Sachdeva vs Union of India & others

CORAM : HON'BLE MR.JUSTICE UMA NATH SINGH
HON'BLE MR.JUSTICE RAJIVE BHALLA

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Present : Mr.Anil Kumar, Advocate, for
Mr.S.N.Saini, Advocate,
for the petitioner in CWP No.10864 of 2006.

Mr.N.S.Bawa, Advocate,
for the petitioners in CWP No.20377 of 2006.

Mr.Dharam Pal, Advocate,
for the petitioner in CWP No.4929 of 2006.

Mr.Virander Sachdeva, petitioner in person
in CWP No.12602 of 2007.

Mr.I.S.Saggu, Advocate,
for the Union of India.

Mr.Arun Jain, Advocate &
Mr.Ajay Kaushik, Advocate
for respondents No.2 & 3.

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1. **Whether Reporters of Local Newspapers may be allowed to see the judgment ?**
2. **To be referred to the Reporters or not ?**
3. **Whether the judgment should be reported in the Digest ?**

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RAJIVE BHALLA,J

This order shall dispose of CWP Nos.10864, 20377, 4929 of 2006 and 12602 of 2007, as common questions of fact and law are involved therein.

The petitioners, herein, are Graduates in Law, having sat for and successfully taken the examinations for Bachelor of Laws from various Universities, duly recognized by the Bar Council.

The issue, before us, that requires adjudication, is the legality of rule 2-B of rule 28(2)(d) read with Section 24(1)(e) of the Advocates Act, 1961 (for short herein after referred to as "the Act"). The said amendment debars a person, otherwise qualified to be enrolled as an Advocate with a Bar Council, from grant of a licence to practise law, as he has crossed the age of 45. We are called upon to opine as to the legality of the above amendment.

In these writ petitions, there is no dispute that the petitioners have obtained degrees in Bachelor of Law from Universities, recognized by the Bar Council. It is also not disputed that petitioners are beyond 45 years of age, when they applied for a licence to practise. However, it would be appropriate to briefly refer to the facts of each case.

CWP No.10864 of 2006

Petitioner-Lal Chand was conferred a degree of Bachelor of Commerce from Kurukshetra University, Kurukshetra in 1969. He passed his Bachelor of Law (LLB) in 1982 from Maharishi Dayanand University, Rohtak as a regular student in evening classes, while serving in the Education Department as Senior Librarian in Government College for Boys. He was selected for the post of Asstt. District Attorney (Service Quota) and appointed as such, vide order dated 1.4.1986. The petitioner, pursuant to a

notification, issued by the Government of Haryana, was appointed as Public Prosecutor. He claims that he purchased an enrolment form in November 2005 and presented an application before the Bar Council, Punjab & Haryana, at Chandigarh, after completing all requisite formalities. However, he was asked to submit the form, after some time. He thereafter retired on 28.2.2006 and applied for enrolment on 8.3.2006. The form was accepted but in view of the aforementioned amendment, it appears that his application was rejected.

CWP No.20377 of 2006

Petitioner No.1-Om Parkash Kakkar obtained his Law Degree from Punjab University in 1972. He joined government service in 1961 and retired from service on 30.4.2001 as Special Secretary from Punjab and Haryana High Court.

Petitioner No.2-Mrs Savitri Devi obtained her Degree in Law from Punjab University in 1977, while in service and retired from Punjab and Haryana High Court as Deputy Registrar on 30.11.2005.

Petitioner No.3-Jagjit Singh Nindrajog obtained his Law Degree in 1964, while in service and retired on 28.2.2001 as Deputy Director, Forest Department, Punjab.

Petitioner No.4-Balbir Singh obtained his Law Degree from Guru Nanak Dev University in 1977, while in service and retired on 31.1.2006.

Petitioner No.5-Suresh Kumar Sharma obtained his Law Degree from Bombay University in 1995, while in service.

The petitioners' applications for enrolment have been rejected by the Bar Council of Punjab and Haryana, Chandigarh, on the ground of

their ages being beyond 45 years.

CWP No.4929 of 2006

Petitioner-Manmohan Singh obtained his Law Degree from Punjabi University, Patiala in 1982, while in service. He retired as Deputy Secretary in 2004 from the Punjab State Electricity Board, Patiala. However, in view of the aforementioned amendment, the petitioner has not submitted an application for enrolment as an Advocate.

C.W.P No.12602 of 2007

Petitioner-Virander Sachdeva after serving a private limited company at Chandigarh from 1981 to 2004, obtained his Law Degree from Panjab University, Chandigarh in 2007. He applied for his enrolment as an Advocate. However, in view of the aforementioned amendment, the petitioner was informed by the officials of Bar Council that his application for enrolment as an Advocate, would not be considered.

Counsel for the petitioners have vehemently asserted that rule 2-B of Rule 28(2)(d) of the Rules, as enacted by the Bar Council of Punjab and Haryana, is beyond its rule making power. Section 24 of the Act specifically sets out that subject to the provisions of the Act and the rules framed thereunder, a person shall be qualified to be admitted as an Advocate on rolls of a State Bar Council, if he fulfills the conditions contained therein. Sub clause (e) of sub-section (1) of Section 24 of the Act requires a prospective applicant to fulfill such other conditions as may be specified in the Rules, made by the State Bar Council, under this Chapter, i.e Chapter III of the Act. It is submitted that as Section 24 of the Act does not set out any upper age limit for enrolment as an Advocate on the rolls of a State Bar Council, the Bar Council has no legislative authority

to enact rule 2-B so as to prescribe an upper age limit. It is further contended that if Parliament had envisaged such a limitation, on the right of enrolment, the Act would have prescribed an upper age limit. It is, thus, asserted that as the amendment introduced by the State Bar Council, is beyond the rule making power of the State Bar Council, it could not prescribe qualifications/conditions, beyond those prescribed under Section 24 of the Act.

Another contention, pressed into service, is that Section 24-A of the Act, which prescribes disqualifications for enrolment, does not prescribe an upper age limit. In case Parliament envisaged an upper age limit, it would have provided for such an age limit in Section 24-A of the Act. The absence of any upper age limit in Section 24-A of the Act, indicates positive legislative intent not to prescribe an upper age limit. The Bar Council of Punjab and Haryana could not have prescribed an upper age limit by disregarding legislative intent, discernible from Section 24 of the Act.

Another argument, pressed into service, by counsel for the petitioners, is that a similar amendment was notified by the Bar Council of India by inserting rule 9 in Chapter III of Part VI of the Bar Council of India Rules. This amendment prescribed that a person, who had completed the age of 45 years, on the date on which he submitted his application for enrolment as an Advocate to the State Bar Council, would not be enrolled as an Advocate. The Hon'ble Supreme Court of India in a judgment reported as Indian Council of Legal Aid and Advice etc. etc v. Bar Council of India and another, AIR 1995 SC 691, held that the rule, as framed, violates the doctrine of liberty and equality, enshrined in Article 14 of the

Constitution. The rule was held to be unreasonable and arbitrary, as it was enacted, keeping in view a certain group of persons, who would bring the profession in disrepute, while ignoring a vast majority of other persons, who were in service of the government or quasi-government or similar institutions. It is asserted that the ratio of the aforementioned judgment is fully applicable to the present case and, therefore, as the amendment is discriminatory, arbitrary and unreasonable, it be struck down.

Counsel for the petitioners have also placed reliance upon a judgment of a Division Bench of the Madras High Court reported as M.Radhakrishnan v. The Secretary, The Bar Council of India & Anr, AIR 2007 Madras 108, wherein a similar amendment, made by the Bar Council of Tamil Nadu, was struck down, after placing reliance upon the aforementioned judgment of the Hon'ble Supreme Court, namely, Indian Council of Legal Aid and Advice etc. etc (supra). It is also argued that as the impugned amendment is identical to the amendment, enacted by the Bar Council of India and the Bar Council of Tamil Nadu, the present writ petitions be allowed and the newly inserted rule 2-B be struck down.

The Bar Council of Punjab and Haryana, represented by Shri Arun Jain, Advocate, prays that the amendment, prescribing an upper age limit, be upheld. It is submitted that the State Bar Council is empowered to make rules and impose such conditions, subject whereto a person may be admitted as an Advocate to the rolls of the State Bar Council. In the exercise of its rule making powers, and taking into consideration the need to ensure that entry into the profession is at a right age, the State Bar Council enacted the impugned amendment. It is submitted that mere prescription of a maximum age would not render the rule arbitrary, unreasonable or

violative of Article 14 of the Constitution. The rule seeks to address a serious situation that prevails in the legal profession, namely, to exclude retirees and late entrants into the profession, as they do not possess requisite acumen to become constructive and responsible members of the legal profession. Many of these late entrants consider the legal profession as a supplementary source of income, post retirement, and not a career, thus, leading to a deterioration in professional and ethical standards in the profession. It is further submitted that no other profession permits entry at the age of 45 or above. Persons, who seek to enter the profession post retirement, gain an unfair advantage vis.a.vis young law graduates entering the profession. A large number of instances have come to the notice of the Bar Council of late entrants indulging in mal-practices. It is further submitted that as the Act confers a statutory duty/power upon the Bar Council of India, to prescribe conditions for enrolling Advocates, the State Bar Councils has, in the exercise of its rule making power, enacted the amendment so as to protect the profession from such part time Lawyers who seek to play a second inning, after the conclusion of their first.

It is further submitted that the Hon'ble Supreme Court in Indian Council of Legal Aid and Advice etc. etc (supra), quashed a similar amendment, notified by the Bar Council of India on the ground that the Bar Council of India had no statutory authority to enact such an amendment. However, the Hon'ble Supreme Court noticed and infact upheld the power of the State Bar Councils to prescribe conditions for enrolment of Advocates and, therefore, the power to prescribe an upper age limit. It is further submitted that providing an upper age limit is neither arbitrary nor illegal. It has been prescribed with the object of ensuring the health of the

legal profession, which is in jeopardy on account of a huge influx of retirees and individuals, who have left jobs to join the legal profession.

It is further argued that the judgment of the Madras High Court in M.Radhakrishnan's case (supra) did not quash the amendment for lack of statutory power but merely held the amendment to be unreasonable. The Bar Council of Tamil Nadu failed to bring to the notice of the Madras High Court the statutory basis for the aforementioned amendment, as also facts necessary for the said amendment.

We have heard learned counsel for the parties, perused the paper book, as also the judgments, referred to herein above.

The Advocates Act, 1961 came to be enacted by Parliament to provide, amongst others, for an autonomous and independent Bar Council of India, as also Bar Councils for each State. A State Bar Council is conferred, with jurisdiction, to enrol Advocates, who fulfill the conditions, prescribed in the Act and/or as laid down by the State Bar Council. An Advocate, enrolled to the rolls of a State Bar Council, is entitled to practise law, before any Court in India, including High Courts and Supreme Court of India.

Before we proceed to adjudicate the merits of the present controversy, it would be necessary to reproduce the relevant provisions of the Act and the Rules framed thereunder, and the impugned amendment.

Chapter III of the Act titled "Admission and enrolment of Advocates" deals with enrolment of Advocates. Sections 24 and 28 of the Act read as follows :-

> **24. Persons who may be admitted as advocates on a State roll.**
>
> (1) Subject to the provisions of this Act, and the rules

made there under, a person shall be qualified to be admitted as an advocate on a State roll, if he fulfills the following conditions, namely: -

(a) he is a citizen of India:

Provided that subject to the other provisions contained in this Act, a national of any other country may be admitted as an advocate on a State roll, if citizens of India, duly qualified, are permitted to practise law in that other country;

(b) he has completed the age of twenty-one years;

(c) he has obtained a degree in law-

(i) before the 12th day of March, 1967 from any University, in the territory of India; or

(ii) before the 15th of August, 1947, from any University in any area which was comprised before that date within India as defined by the Government of India Act, 1935; or

(iii) after the 12th day of March, 1967, save as provided in sub-clause (iii) after undergoing a three years course of study in law from any University in India which is recognised for the purposes of this Act by the Bar Council of India; or

(iiia) after undergoing a course of study in law, the duration of which is not less than two academic years commencing from the academic year 1967-68 or any earlier academic year from any University in India which

is recognised for the purposes of this Act by the Bar Council of India; or

(iv) in any other case, from any University outside the territory of India, if the degree is recognised 'for the purpose of this Act by the Bar Council of India] or;

he is a barrister and is called to the Bar on or before the 31st day of December, 1976 or has passed the article clerks' examination or any other examination specified by the High Court at Bombay or Calcutta for enrolment as an attorney of that High Court;] or has obtained such other foreign qualification in law as is recognised by the Bar Council of India for the purpose of admission as an advocate under this Act;

(d) Omitted.

(e) he fulfills such other conditions as may be specified in the rules made by the State bar Council under this Chapter;

(f) he has paid, in respect of the enrolment, stamp duty, if any, chargeable under the Indian Stamp Act 1899, and an enrolment fee payable to the State Bar Council of six hundred rupees and to the Bar Council of India, one hundred and fifty rupees by way of a bank draft drawn in favour of that Council :

Provided that where such person is a member of the Scheduled Castes or the Scheduled Tribes and produces a certificate to the effect from such authority as may be

prescribed, the enrolment fee payable by him to the State Bar Council shall be one hundred rupees and to the Bar Council of India, twenty-five rupees.

Explanation -For the purposes of this sub-section, a person shall be deemed to have obtained a degree in law from a University in India on that date on which the results of the examination for that degree are published by the University on its notice-board or otherwise declaring him to have passed that examination.

(2) Notwithstanding anything contained in sub-section (1) a vakil or a pleader who is a law graduate] may be admitted as an advocate on a State roll, if he

(a) makes an application for such enrolment in accordance with the provisions of this Act, not later than two years from the appointed, day, and

(b) fulfills the conditions specified in clauses (a), (b), (e) and (f) of subsection (1)

(3) Notwithstanding anything contained in subsection (1) a person who-

(a) has, for at least three years, been a vakil or a pleader or a mukhtar or was entitled at any time to be enrolled under any law as an advocate of a High Court (including a High Court of a former Part B State) or of a Court of Judicial Commissioner in any Union territory; or

(aa) before the 1st day of December, 1961, was entitled otherwise than as an advocate to practise the profession

of law (whether by way of pleading or acting or both) by virtue of the provisions of any law, or who would have been so entitled had he not been in public service on the said date; or

(b) omitted.

(c) before the 1st day of April, 1937, has been an advocate of any High Court in any area which was comprised within Burma as defined in the Government of India Act, 1935-, or

(d) is entitled to be enrolled as an advocate under any rule made by the Bar Council of India in this behalf, may be admitted as an advocate on a State roll if he-

(i) makes an application for such enrolment in accordance with the provisions of this Act; and

(ii) fulfills the conditions specified in clauses (a), (b), (e) and (f) of sub-section (1)."

28. Power to make rules.

(1) A State Bar Council may make rules to carry out the purposes of this Chapter.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for-

(a) the time within which and form in which an advocate shall express his intention for the entry of his name in the roll of a State bar Council under Section 20;

(b) Omitted.

(c) the form in which an application shall be made to the Bar Council for admission as an advocate on its roll and the manner in which such application shall be disposed of by the enrolment committee of the Bar Council;

(d) the conditions subject to which a person may be admitted as an advocate on any such roll:

(e) the instalments in which the enrolment fee may be paid.

(3) No rules made under this Chapter shall have effect unless they have been approved by the Bar Council of India."

Section 24 of the Act prescribes the conditions, necessary for enrolment as an Advocate, to the roll of a State Bar Council. Broadly speaking, an applicant must be a citizen of India, should have completed the age of 21 years, and should have obtained a degree in law to be eligible for enrolment as an Advocate. As per Section 24(1)(e) of the Act, an applicant is also required to fulfill such other conditions, as may be specified by Rules, framed by the State Bar Council. Sub-section (1) of Section 28 of the Act empowers a State Bar Council to make rules to carry out the purposes of this Chapter. Sub-section (2) of Section 28 of the Act empowers a State Bar Council, in particular and without prejudice to the generality of the power, contained in Section 28(1) of the Act, to provide, by way of rules, conditions, subject to which a person may be admitted as an Advocate to the roll of a State Bar Council.

The Bar Council of Punjab and Haryana, in the exercise of its rule making power, has enacted an amendment, by incorporating Rule 2-B

after Rule 2-A of Rule 28(2)(d), setting down an upper age limit of 45 years, after attaining which a person shall not be enrolled as an Advocate. The rule reads as follows :-

"**Rule 2-B**

A person, who is otherwise qualified to be admitted as an advocate but is of more than 45 years of age on the date of submission of application for enrolment in the Bar Council, shall not be admitted as an advocate.

Further provided that this rule shall not be applicable to any person whose enrolment application is pending, before the coming into force of this rule.

It is further clarified that provision of this rule shall not be applicable to any advocates already enrolled by any High Court under Indian Bar Council Act, 1926 but intimation u/s 17(1)(a) of Act was not received from the concerned advocate.

The provision of this rule shall also apply in case of persons seeking transfer of enrolment to this Bar Council by means of transfer from other State Bar Councils.

However, the provisions of this rule shall not apply to any person enrolled as an advocate in any other State Bar Council seeking transfer to this State Bar Council before the coming into force of this rule.

This rule will come into force, from the date of approval of the Bar Council of India."

Rule 2-B bars a person "..... who is otherwise qualified....." for being admitted to the rolls of the Bar Council of Punjab and Haryana if, on the date of his application, he has crossed the age of 45 years. The rationale for this rule, as forcefully asserted by counsel for the Bar Council, is the urgent need to maintain standards of professional ethics, integrity and competence, which have been severely eroded on account of mal practices, indulged in by late entrants/retirees into the profession. It would be necessary to mention here that a similar rule, imposing an upper age limit of 45 years, was enacted by the Bar Council of India. The Hon'ble Supreme Court, while considering a legal challenge to this rule, held, in Indian Council of Legal Aid and Advice etc. etc (supra), that the Bar Council of India had no statutory power to enact such a rule. The Hon'ble Supreme Court also opined that the rule, as framed, was discriminatory, arbitrary, unreasonable, ultra vires the Act and opposed to Article 14 of the Constitution of India. It would be appropriate to reproduce a relevant extract from the aforementioned judgment, which reads as under :-

"10. But the larger question needs to be answered and that is whether the said clause applies to persons belonging to a certain age group. Section 28(1)(d) of the Act authorises a State Bar Council to make rules prescribing the conditions subject to which a person may be admitted as an advocate. The power to specify the class or category of persons entitled to be enrolled as advocates is conferred on the Bar Council of India under

Section 49(1)(ag) and on the Central Government under Sec.49A of the Act. The rule which a State Bar Council has to play under Section 28 is distinct from that the Bar Council of India has to play under S.49(1)(ag) of the Act, in that, after the class or category is identified, they do not automatically get admitted or enrolled they still have to abide by the requirements for admission to the State roll. Therefore, apart from a class or 'group being declared 'entitled to enrolment', the other conditions or norms evolved by the State Bar Council for entry of the individual on its role would have to be satisfied.

11. It seems Parliament while enacting the Act created agencies at the State level as well as at the Central level in the form of State Bar Councils and Bar Council of India and invested them with rule making powers on diverse matters touching the legal profession, presumably because it must have realised that matter pertaining to the profession are best left to informed bodies comprising of members of the said profession. However, while doing so it provided for basic substantive matters, e.g., eligibility for entry into the profession (Section 24), disqualification for enrolment (Section 24A), authority entitled to grant admission (Section 25 and 26), the authority which can remove any name from the roll (Section 26A), etc. and placed them within the domain of a State Bar Council. Thus it is the State Bar Council which alone must decide

> on the question of enrolment of an applicant on its roll. Under Section 24 a person who is a citizen of India and possesses a degree in law becomes qualified to be admitted as an advocate if he has completed twenty-one years of age, subject of course to the other provisions of the Act. No doubt he must fulfil the other conditions specified in the rules made by the State Bar Council (Section 24(1)(e). Every person whose name is entered in the list of advocates has a right to practice in all Courts including the Supreme Court, before any tribunal or other authority. It is, therefore, within the exclusive domain of the State Bar Councils to admit persons as advocates on their rolls or to remove their names from the rolls. There is no provision in Chapter III dealing with the admission and enrolment of advocates which restricts the entry of those who have completed 45 years as advocates. Nor has the State Bar Council made any such rule under its rule making power."

The Hon'ble Supreme Court, thus, while holding that the Bar Council of India had no statutory power to prescribe an upper age limit, held that the question of prescribing conditions for enrolment fell within the exclusive domain of a State Bar Council. The Hon'ble Supreme Court thereafter proceeded to examine the validity of the amendment i.e the basis, the rationale and the legality of the amendment, and held as follows :

> "12..... We are unable to subscribe to the view that all those who have completed the age of 45 years

and are otherwise eligible to be enrolled as advocates constitute a class or category which can be disqualified as a single block from entering the profession. Besides, as stated above clause (ag) (sic) identification and specification of a class or category of persons 'entitled' to be enrolled and not 'disentitled' to the enrolled as advocates. We, therefore, are of the opinion that the impugned rule is beyond the rule making power of the Bar Council of India and is, therefore, ultra vires the Act.

13. The next question is, is the rule reasonable or arbitrary and unreasonable? The rationale for the rule, as stated earlier, is to maintain the dignity and purity of the profession by keeping out those who retire from various Government, quasi-government and other institutions since they on being enrolled as advocates use their past contacts to canvass for cases and thereby bring the profession into disrepute and also pollute the minds of young fresh entrants to the profession. Thus the object of the rule is clearly to shut the doors of the profession for those who seek entry into the profession after completing the age of 45 years. In the first place, there is no reliable statistical or other material placed on record in support of the inference that ex-Government or quasi-Government servants or the like indulge in undesirable activity of the type mentioned after entering the profession. Secondly, the rule does not debar only

such persons from entry into the profession but those who have completed 45 years of age on the date of seeking enrolment. Thirdly those who were enrolled as advocates while they were young and had later taken up some job in any Government or quasi-Government or similar institution and had kept the sanad in abeyance are not debarred from reviving their sanads even after they have completed 45 years of age. There may be a large number of persons who initially entered the profession but later took up jobs or entered any other gainful occupation who revert to practise at a later date even after they have crossed the age of 45 years and under the impugned rule they are not debarred from practising. Therefore, in the first place there is no dependable material in support of the rationale on which the rule is founded and secondly the rule is discriminatory as it debars one group of persons who have crossed the age of 45 years from enrolment while allowing another group to revive and continue practise even after crossing the age of 45 years. The rule, in our view, therefore, is clearly discriminatory. Thirdly, it is unreasonable and arbitrary as the choice of the age of 45 years is made keeping only a certain group in mind ignoring the vast majority of other persons who were in the service of Government or quasi-Government or similar institutions at any point of time. Thus, in our view the impugned rule violates the

principle of equality enshrined in Article 14 of the Constitution.

15. In the result, these petitions succeed. The new Rule 9 inserted in Chapter III extracted in the opening paragraph of this judgment is struck down as ultra vires the Act and opposed to Article 14 of the Constitution. The Bar Council of India and the State Bar Councils are directed not to implement the said rule. No order as to costs."

A perusal of the above extract, leaves no manner of doubt that while considering the legality and the nature of the amendment, the Hon'ble Supreme Court held that there was no reliable statistical or other material, placed on record, in support of the inference that ex-government or quasi government servants or the like indulge in activities detrimental to the health of the profession. Another conclusion, recorded by the Hon'ble Supreme Court, was that the rule does not debar only those persons, who allegedly indulge in undesirable activities but all those persons, who have completed 45 years of age. It was, therefore, concluded that in the absence of any dependable material in support of the rationale, pressed into service,to justify the enactment of the rule, the rule was discriminatory, unreasonable, arbitrary, utra vires of the Act and opposed to Article 14 of the Constitution.

At this stage, it would be necessary to make a reference to a judgment of the Madras High Court in M.Radhakrishnan's case (supra), where, while considering a similar amendment, effected by the Bar Council of the State of Tamil Nadu, a Division Bench of the Madras High Court held as follows :-

"13. ..... We emphasise that while striking down Rule 9, the Supreme Court, after observing so, not stopping therewith, itself posed a question, "13. The next question is, is the rule reasonable or arbitrary and unreasonable ?" and answered the same, which is extracted in the earlier part of the judgment. Hence, the contention of the respondents that the Supreme Court struck down Rule 9 framed by the Bar Council of India only on the basis of jurisdictional aspect and not on other various aspects has no substance. We also add here that when a person is fully qualified to be enrolled to practise as an Advocate and such person, if curtailed from enrolment on the basis of age factor, in view of the reasons given above, such curtailment cannot be so lightly defended by stating that the right to practice as an Advocate is merely a statutory right in a given set of facts. We unveil the object of the rule that it is only to curtail a group of persons from entering into the profession and to satisfy other group of persons who also stand on the same footing. Merely because happening of certain stray instances here and there, it cannot be said that the whole field is dominated by persons with undesirable character.

14. We cumulatively considered above the acceptability of the various factors projected for imposing the upper age limit. We make it clear that we are not

> underestimating the rule-making power of the Bar Council of Tamil Nadu, at the same time, we cannot uphold the validity of a provision, even though it arises out of the rule-making power of the authority with proper jurisdiction when it is apparently stained with arbitrariness and inequality and infringes Article 14 of the Constitution. Thus, we have no other option except to declare the impugned Rule-8(A) as void and unconstitutional."

A perusal of the aforementioned judgment, more particularly the portion extracted and reproduced herein above, reveals that the Bar Council of Tamil Nadu enacted a rule, prescribing an upper age limit beyond which a person would not be enrolled as an Advocate, to the rolls of the State Bar Council. The Madras High Court, after a detailed appraisal of the amendment, the provisions of the Act, and the judgment of the Hon'ble Supreme Court in Indian Council of Legal Aid and Advice etc. etc (supra), struck down the amendment.

The impugned rule namely Rule 2-B,enacted by the Bar Council of Punjab and Haryana is para materia to the rule enacted by the Bar Council of Tamil Nadu. Counsel for the respondents was unable to advance any argument to distinguish the aforementioned judgment. We are in respectful agreement with the view, propounded by the Division Bench of the Madras High Court and draw sustenance therefrom. In our considered opinion, the rule, framed by the Bar Council of India and the Bar Council of Tamil Nadu, being identical to the rule, framed by the Bar Council of Punjab and Haryana, the impugned rule must meet the same fate as met by

the amendments, made by the Bar Council of India and the Bar Council of Tamil Nadu.

A perusal of the impugned amendment, the ratio of the judgments of the Hon'ble Supreme Court, and the Madras High Court, leaves no manner of doubt that the question as to whether the amendment, enacted by the Bar Council of Punjab and Haryana, is arbitrary, unreasonable and discriminatory, is squarely covered by the ratio of the aforementioned judgements and must, therefore, be answered by holding and as held by the Hon'ble Supreme Court that impugned amendment is violative of Article 14 of the Constitution, and ultra vires the provisions of the Act.

Though counsel for the Bar Council of Punjab and Haryana, was unable to distinguish the aforementioned precedents, his repeated refrain that the amendment seeks to address a serious malady that has come to pervade the legal profession, namely, retirees and aged persons joining the profession, without any seriousness of purpose,has led to an increase in mal-practices in the profession, remains unsubstantiated by reference to any material. It was also canvassed that the object of the amendment was to enhance professional ethics and maintain the purity of performance. As to how such an object would be achieved by excluding all those who have crossed the age of 45 mystifies us. We called upon the Bar Council of Punjab and Haryana to place before us any statistical study that would support the assertions, namely, that persons enrolled after the age of 45 or post-retirement, indulge in mal-practices. However no such material was placed before us at any stage of the proceedings. Thus, in the absence of any material, much less cogent material, in support of the above asserted

rationale, for the enactment of Rule 2-B, we are satisfied that the rule has been enacted without any basis whether in fact or in law.

To condemn a class of persons and brand them, as the cause for the alleged fall in standards in the legal profession, in the absence of any material or statistical data, is an arbitrary exercise of the rule making power, as also unreasonable, unjust and violative of Article 14 of the Constitution of India. An entire class of persons, above the age of 45, have been classified as perpetrators of the ills that pervade the legal profession. Such a classification would, in our considered opinion, be unwarranted. Isolated instances of mal-practice by late entrants into the profession cannot be utilised to condemn an entire class of duly qualified persons aged above 45 years so as to treat them differently. Our above conclusions are fully covered by the ratio laid down by the Hon'ble Supreme Court in Indian Council of Legal Aid and Advice etc. etc (supra), Rule 2-B, as framed, is, therefore, violative of the principles of equality, enshrined in Article 14 of the Constitution.

If, as canvassed by counsel for the Bar Council of Punjab and Haryana, the legal profession is facing a crisis of quality, the remedy lies elsewhere and not in erecting walls of exclusion to shut out persons otherwise qualified. We have no doubt, in view of the authoritative pronouncement of the Hon'ble Supreme Court in Indian Council of Legal Aid and Advice etc. etc (supra), that the rule, as enacted, is not only violative of Article 14 of the Constitution but also unreasonable and arbitrary.

This noble profession that swears by the principles of equality, fraternity, and liberty, would be ill-advised to raise such barriers

in this age of globalization. To condemn a person for his age, or to condemn a class of persons above 45 as perpetrators of ills, as alleged by counsel of the Bar Council, would be unjust, unfair and arbitrary. The State Bar Council, an institution of great significance power and prestige, would be well advised to take steps to ensure better legal education, periodic post enrolment education and courses for members of the legal fraternity so as to enhance the efficiency and glory of this noble profession.

With the aforementioned observations, we hold that though the Bar Council of the Punjab and Haryana has the rule making power to prescribe conditions for enrolment of law graduates to the rolls of the State Bar Council, Rule 2-B of rule 28(2)(d) of the Rules, is illegal, being unreasonable, arbitrary and violative of Article 14 of the Constitution of India and is, therefore, struck down.

Consequently, the present writ petitions are allowed. The Bar Council of Punjab and Haryana shall consider the petitioners' applications afresh. In case, any of the petitioners has/have not filed an application for enrolment, they shall be entitled to do so, in accordance with law. We have no doubt that the Bar Council shall consider these applications, in accordance with law expeditiously.

(RAJIVE BHALLA)
JUDGE

(UMA NATH SINGH)
JUDGE

September 21, 2007
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